IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 3RD APRIL 2007 / 13TH CHAITHRA 1930

WP(C).No. 7803 of 2007(D)

PETITIONER:

ESSAR OIL LIMITED,
PUTHIYA ROAD, LFC ROAD, KOCHI-17,
REPRESENTED BY ITS DIVISIONAL MANAGER,
TOMY VARGHESE.

BY ADV. SRI.V.SIVASWAMY
SMT.S.LAKSHMY
SRI.K.I.MAYANKUTTY MATHER

RESPONDENTS:
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1. **INTELLIGENCE OFFICER (INVESTIGATION BRANCH), COMMERCIAL TAXES, ERNAKULAM.**
2. **DEPUTY COMMISSIONER, ERNAKULAM.**
3. **ASSISTANT COMMISSIONER, ASSESSMENT I, SPECIAL CIRCLE-II, ERNAKULAM.**
4. **SHEBNA ENTERPRISES, ANDROTH ILAND, LAKSHADWEEP.**
5. **IFAN ENTERPRISES, AGATHY, LAKSHADWEEP.**
6. **THE MANAGER, HDFC BANK LIMITED, MUMBAI.**
7. **THE MANAGER, HDFC BANK LIMITED, RAVIPURAM BRANCH, ERNAKULAM.**

BY SR.GOVERNMENT PLEADER SRI. MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:	**COPY OF APPROVAL CERTIFICATE ISSUED BY ADMINISTRATOR OF UT OF LAKSHADWEEP DTD. 23/10/1999.**
EXT.P1(A):	**COPY OF APPROVAL CERTIFICATE ISSUED BY ADMINISTRATOR OF UT OF LAKSHADWEEP DTD. 12/10/2004.**
EXT.P1(B):	**COPY OF APPROVAL CERTIFICATE ISSUED BY ADMINISTRATOR OF UT OF LAKSHADWEEP DTD. 09/03/2005.**
EXT.P1(C):	**COPY OF THE PERMIT ISSUED BY THE UT AUTHORITIES TO M/S. IFAN ENTERPRISES DTD. 18/05/2004.**
EXT.P1(D):	**COPY OF THE PERMIT ISSUED BY THE UT AUTHORITIES TO M/S. IFAN ENTERPRISES DTD. 18/05/2004.**
EXT.P1(E):	**COPY OF THE PERMIT ISSUED BY THE UT AUTHORITIES TO M/S.SHEBNA ENTERPRISES DTD. 15/10/1999.**
EXT.P1(F):	**COPY OF THE EXPLOSIVE LICENCE ISSUED BY IT CHIEF CONTROLLER OF EXPLOSIVES CHENNAI, IN THE NAME OF M/S. IFAN ENTERPRISES DTD. 5/11/2004.**
EXT.P1(G):	**COPY OF THE EXPLOSIVE LICENCE ISSUED BY IT CHIEF CONTROLLER OF EXPLOSIVES CHENNAI, IN THE NAME OF M/S. SHEBNA ENTERPRISES DTD. 13/03/2001.**
EXT.P1(H):	**COPY OF ANNEXURE I UNDER SRO.1091/99 ISSUED BY M/S. SHEBNA ENTERPRISES.**
EXT.P1(I):	**COPY OF ANNEXURE I UNDER SRO.1091/99 AND THE INDENT ISSUED BY MS/.SHEBNA ENTERPRISES.**
EXT.P2:	**COPY OF ANNEXURE I DECLARATION UNDER SRO.1091/1999 DTD. 18/11/2004.**
EXT.P2(A):	**COPY OF ANNEXURE I DECLARATION UNDER SRO.1091/1999 DTD. 29/01/2005.**
EXT.P2(B):	**COPY OF ANNEXURE I DECLARATION UNDER SRO.1091/1999 DTD. 03/01/2005.**
EXT.P2(C):	**COPY OF ANNEXURE I DECLARATION UNDER SRO.1091/1999 DTD. 16/11/2004.**
EXT.P2(D):	**COPY OF ANNEXURE I DECLARATION UNDER SRO.1091/1999 DTD. 18/11/2004.**

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EXT.P2(E):	COPY OF ANNEXURE I DECLARATION UNDER SRO.1091/1999 DTD. 28/10/2004.
EXT.P2(F):	COPY OF ANNEXURE I DECLARATION UNDER SRO.1091/1999 DTD. 18/11/2004.
EXT.P2(G):	COPY OF ANNEXURE I DECLARATION UNDER SRO.1091/1999 DTD. 29/09/2004.
EXT.P2(H):	COPY OF ANNEXURE I DECLARATION UNDER SRO.1091/1999 DTD. 30/10/2004.
EXT.P2(I);	COPY OF ANNEXURE I DECLARATION UNDER SRO.1091/1999 DTD. 27/11/2004.
EXT.P2(J):	COPY OF ANNEXURE I DECLARATION UNDER SRO.1091/1999 DTD. 30/09/2004.
EXT.P2(K):	COPY OF ANNEXURE I DECLARATION UNDER SRO.1091/1999 DTD. 31/01/2005.
EXT.P2(L):	COPY OF ANNEXURE I DECLARATION UNDER SRO.1091/1999 DTD. 30/11/2004.
EXT.P3:	COPY OF THE NOTICE ISSUED BY THE 1ST RESPONDENT DTD. 26/06/2006.
EXT.P4:	COPY OF PRELIMINARY AND ADDITIONAL OBJECTIONS SUBMITTED BY THE PETITIONER DTD. 21/07/2006..
EXT.P5:	COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT DTD. 28/12/2006.
EXT.P6:	COPY OF NOTICE ISSUED BY THE 3RD RESPONDENT TO THE PETITIONERS BANK DTD. 3/03/2007.
EXT.P7:	COPY OF THE ORDER REVISION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DTD. 6/03/2007.
EXT.P8;	COPY OF THE STAY APPLICATION FILED BY THE PETITIONER DTD. 6/03/2007.
EXT.P9:	COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT DTD. 23/03/2007.

/TRUE COPY/

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K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 7803 OF 2007-D

JUDGMENT

This is an appeal pending matter. In view of the interim order passed by this Court on 8.3.2007, practically the writ petition has become infructuous. But, the petitioner has produced Ext.P9 interim order passed by the 1st revisional authority, pursuant to the interim order of this Court dated 8.3.2007. It challenges Ext.P9, by amending the writ petition. According to the petitioner, absolute stay should have been granted against the impugned penalty order. But, the revisional authority has directed the petitioner to pay one-third of the amount. The petitioner submits, it has done everything possible from its side and if its dealers have committed some illegality or fraud, it cannot be held liable. In support of the said submission, the learned counsel for the petitioner took me through various materials in the writ petition, including the certificate issued by the Lakshadweep Administration in favour of the dealers of the petitioner. The allegation against them is that they obtained High Speed Diesel at 4% sales tax on the ground that they are transporting it for use in the Islands. Instead of that, the dealers sold the diesel in Kerala itself, where the tax for the said

item is 24%. Thus, substantial loss has been caused to the State ex-chequer. The petitioner points out that it acted on Ext.P1 series certificates issued by the Lakshadweep Administration and also the declarations made by the concerned dealers as per the requirement of SRO No.1728/93, as amended by SRO No.1091/99. It is pointed out that the petitioner has been roped in on very slender grounds. It has been found fault with for not verifying whether the demand drafts submitted by the dealers towards the price of the commodity were drawn from the accounts of the dealers. According to the petitioner, normally no oil company will verify the demand drafts submitted on behalf of the dealers. So, practically, without any valid ground, the petitioner has been implicated and mulcted with the penalty, it is submitted. Other contentions are also raised.

2. In support of the submissions, the learned counsel for the petitioner relied on the decision of this Court in **Hindustan Petroleum Corporation Ltd. v. I.A.C. & others** [(2000) 8 K.T.R. 216 Ker.] and also the decision of the Apex Court in **Chunni Lal Parshadi Lal v, Commissioner of Sales Tax** [(1986) 62 S.T.C. 112]. The learned counsel also relied on the decision of the Madhya Pradesh High Court in **K.G. Industries v. Sales Tax officer** [(1999) 113 S.T.C. 49].

3. I think, most of the matters raised by the petitioner cannot be gone into at the stage of considering the validity of the interim order. They are matters, which should be considered by the revisional authority. As evident from the interim order, the State has lost sales tax to the tune of Rs.2.5 crores. So, a penalty of double the said amount has been imposed on the petitioner. As per the interim order, the petitioner is directed to pay one-third of the penalty amount. I feel that the said direction cannot be interfered with under Article 226 of the Constitution of India. This Court can interfere with an interim order only on limited grounds. If the contentions of the petitioner are accepted, the same may absolve it from the liability to pay any penalty. But, the same cannot be treated as a ground at this stage, to interfere with the interim order. So, pending consideration of the grounds raised by the petitioner against the penalty order, it has been directed to pay only one-third of the penalty amount. I think, it is a reasonable order. At any rate, it cannot be described as arbitrary or perverse or one, which no man in his senses will pass. So, I do not think that it is proper for this Court to interfere with Ext.P9. In the result, the challenge against Ext.P9 is repelled. But, the learned counsel for the petitioner prays for some time to remit the amount. The petitioner may pay half of the one-

third amount on or before 16.4.2007 and the balance half of the one-third amount on or before 30.4.2007.

Subject to the above direction, the writ petition is dismissed.

3rd April, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/